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Office of Legislative Liaison
Routing Slip

TO:		ACTION	INFO
	1. D/OLL		X
	2. DD/OLL		X
	3. Admin Officer		
	4. Liaison		
	5. Legislation	X	
	6. []		X
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SUSPENSE 18 Oct 85
Date

Action Officer:	[]
Remarks:	[]

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LEGISLATIVE LIAISON

85-2781



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

September 20, 1985

LEGISLATIVE REFERRAL MEMORANDUM

TO:

Central Intelligence Agency
United States Postal Service
Department of Defense

SUBJECT: Department of Justice proposed report on S. 1363, a bill to prohibit the use of the mails to send dangerous martial arts weapons.

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with Circular A-19.

Please provide us with your views no later than October 18, 1985.

Direct your questions to Gregory Jones (395-3454), of this office.


James C. Murr for
Assistant Director for
Legislative Reference

Enclosures

cc: Karen Wilson
Adrian Curtis



Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

Honorable Strom Thurmond
Chairman, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This letter is in response to your request for the views of the Department of Justice on S. 1363, a bill to prohibit the use of the mails to send dangerous martial arts weapons. The Department of Justice recommends enactment of this legislation if amended as suggested below.

If enacted in its present form, the bill would make it a misdemeanor offense for anyone to sell or transfer a dangerous martial arts weapon by use of the mails into a State which prohibits the manufacturing, selling, carrying or possessing of such weapons. However, certain categories of manufacturing, sale or transfer would not be prohibited if they were connected with activities of the Federal Government, of State and local governments, or of the National Guard, or they were to a person or business to whom sale or transfer was legal under the laws of the State. Dangerous martial arts weapons would be defined as throwing stars, nunchaku and fighting chains. Under current law neither the mailing nor the interstate shipment of such weapons is prohibited.

The provisions of the bill are apparently modeled after the Switchblade Knife Act, P.L. 85-623, 72 Stat. 562, with some important differences. The Switchblade Knife Act prohibits the introduction of switchblade knives into not only the mail, 18 U.S.C. § 1716(g), but also into interstate commerce, 15 U.S.C. § 1241 et seq. This bill is unlike the Switchblade Knife Act in that it does not prohibit the shipment in interstate commerce of martial arts weapons. As a consequence, if enacted in its present form, the bill would fail to achieve the stated purpose of its sponsors, i.e., preventing an individual in a State which prohibits possession of such weapons from having the weapons sent to him from outside the

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State. 1/ A company would be able, for example, lawfully to sell a throwing star to a juvenile in Massachusetts by simply sending it to the juvenile via United Parcel Service or some similar interstate carrier, rather than by mail. In order to prevent a juvenile in Massachusetts from purchasing a throwing star or other martial arts weapon from an out-of-state manufacturer or seller, the bill would have to include additional provisions, analogous to those contained in the Switchblade Knife Act, prohibiting the transfer of such weapons in interstate commerce, as well as by mail.

The bill in its current form would not prohibit the mailing of dangerous martial arts weapons to all States but only to those States which prohibit the manufacture, sale, carrying or possession of such weapons. Since the laws of the eleven States which have statutes specifically regulating these weapons differ so widely, 2/ such a limitation will make the bill, if enacted, difficult to enforce and, from the perspective of the citizen, unpredictable in its application. For example, the State of Washington prohibits the possession of martial arts weapons by students under 21 who are on elementary or secondary school grounds. 3/ Would S. 1363, if enacted, prohibit the mailing of a throwing star to a person in the State of Washington if that person is not a student or is over 21 or does not intend to take the star onto the grounds of an elementary or secondary school? New York and Oregon prohibit the possession of nunchaku with the intent to use them unlawfully. 4/ Would S. 1363 prohibit a manufacturer from mailing nunchaku to a customer in New York who intended to use them only for lawful purposes? How is the seller to know the intent of the purchaser? Moreover, many States have not regulated by statute the possession of specifically these types of weapons. Rather, courts have construed general statutes prohibiting the carrying of dangerous weapons to include, under certain circumstances, nunchaku, for example. 5/ Would it be

1/ 131 Cong. Rec. S8850 and S8855 (daily ed. June 26, 1985) (remarks of Sens. Kennedy and Chafee).

2/ See study by the Congressional Research Service, "State Regulation of Certain Martial Arts Implements" reprinted in 131 Cong. Rec. S8851 (daily ed. June 26, 1985).

3/ Wash. Rev. Code Ann. (Supp. 1985) § 9.41.280.

4/ N.Y. Pen. Law (McKinney, 1984-1985) § 265.01; Or. Rev. Stat. (Supp. 1981) § 166.220.

5/ See, for example, In re S.P., 465 A.2d 823 (D.C.App. 1983) (twirling a nunchaku around one's body in the midst of a crowd of onlookers constitutes carrying a dangerous weapon).

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an offense to mail such a weapon into a State which may have, by case law only, prohibited its possession under certain limited circumstances?

It would be more effective and more predictable in application to avoid these problems by simply amending the Switchblade Knife Act to include dangerous martial arts weapons as defined in S. 1363. The introduction of such weapons into the mails or into interstate commerce would then be prohibited regardless of destination. However, such an approach would still allow a State, if it chose, to decide under what circumstances possession of these implements within the State would be lawful, provided the weapons were manufactured and transported only within that State.

The Department of Justice recommends enactment of this legislation if amended as suggested above.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

Phillip D. Brady
Acting Assistant Attorney General